

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

JOSHUA MICHAEL LUNSFORD, CIVIL ACTION FILE NO.

Plaintiff,

vs.

**BERT WALOCK, DAVIS
EXPRESS, INC. and ARCH
INSURANCE COMPANY,**

Defendants.

**REMOVED FROM SUPERIOR
COURT OF DOUGHERTY
COUNTY, GEORGIA
CIVIL ACTION FILE NO.
SUCV2022000531**

DEFENDANTS' NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the Middle District of Georgia, Albany Division:

COME NOW **BERT WALOCK, DAVIS EXPRESS, INC. and ARCH INSURANCE COMPANY** (hereinafter “Defendants”), and file the following Notice of Removal to United States District Court, showing the Court as follows:

1. A civil action was filed on May 20, 2022 in the Superior Court of Dougherty County, State of Georgia. That action is designated there as Civil Action File No.: SUCV2022000531. Defendant Bert Walock was the first Defendant served in this case on June 23, 2022. This removal is timely filed. Plaintiff, in his Complaint, specifically

pled to have incurred damages in excess of \$756,198.80. (Compl. ¶ 26). Therefore, the amount in controversy exceeds \$75,000.00.

2. Defendants file herewith a copy of all process, pleadings, and orders received by Defendants in Civil Action File No.: SUCV2022000531, pursuant to 28 USC §1446 (attached hereto as "Exhibit A").

3. Defendant Bert Walock is an individual and citizen residing in the State of Alabama and with the intent to remain in the State of Alabama. (Pl.'s Compl. ¶ 2).

4. Defendant Davis Express, Inc. is now, was at the commencement of Civil Action File No.: SUCV2022000531, and at all times since has been a corporation organized and existing under the laws of the State of Florida. (Pl.'s Compl. ¶ 3).

5. Defendant Davis Express, Inc.'s Principal Office at the time of filing of Civil Action File No.: SUCV2022000531 was, and at all times since has been located in the State of Florida.

6. Defendant Arch Insurance Company was at the commencement of Civil Action File No. SUCV2022000531, and at all times since has been a corporation organized and existing under the laws of the State of Missouri. (Pl.'s Compl. ¶ 4).

7. Defendant Arch Insurance Company's Principal Office was at the commencement of Civil Action File No. SUCV2022000531, and at all times since has been located in the State of New Jersey.

8. Upon information and belief, Plaintiff is an individual residing in the State of Georgia. (Pl.'s Compl. ¶ 1).

9. The action described above is a civil action with a claim of which this Court has original jurisdiction, and it is one that may be removed to this Court by the Defendants pursuant to the provisions of 28 USC §§ 1332 and 1441 et seq., in that there is complete diversity among the Parties, the Parties are not residents of the same State, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

a. Plaintiff, in his Complaint, specifically pled to have incurred damages in excess of \$756,198.80. (Compl. ¶ 26). Therefore, the amount in controversy exceeds \$75,000.00.

b. "Amount in controversy" means simply the amount sought by Plaintiff that can be legally awarded by the fact-finder. "The jurisdictional fact in this case is not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are: In other words, an amount that a plaintiff claims is not 'in controversy' if no fact finder could legally award it." *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir., 2002). "[T]he plaintiffs' likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is in controversy in the case, not how much

the plaintiffs are ultimately likely to recover." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir., 2010). In a tort case the amount in controversy includes "general, special, and punitive damages." *Williams v. Best Buy Co.*, 269 F.3d 1316, 1320 (11th Cir., 2001).

10. Defendants attach hereto a copy of the Summons and Complaint in Superior Court of Dougherty County, State of Georgia, (See Exhibit "A").

11. Defendants attach hereto a copy of Defendants' Notice of Removal which has been sent for filing in the Superior Court of Dougherty County, State of Georgia, marked as Exhibit "B".

12. All Defendants agree to this removal.

WHEREFORE the Defendants pray that the above action now pending against them in the Superior Court of Dougherty County, State of Georgia, be removed to this Court.

Respectfully submitted this 22nd day of July, 2022.

HALL BOOTH SMITH, P.C.

/s/ James E. Gilson

SCOTT H. MOULTON
Georgia State Bar No. 974237
JAMES E. GILSON
Georgia State Bar No 001150
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DEFENDANT DEMANDS

TRIAL BY JURY

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing
DEFENDANTS' NOTICE OF REMOVAL with the Clerk of Court electronically
which will automatically send an e-mail notification of such filing to the following:

James Matthew Kirtlink Kenneth Nugent, P.C. 208 Westover Blvd. Albany, GA 31707 mkirtlink@attorneykennugent.com	Jan P. Cohen Kenneth Nugent, P.C. 4227 Pleasant Hill Road Building 11, Suite 300 Duluth, GA 30096 jcohen@attorneykennugent.com
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Respectfully submitted this 22nd day of July, 2022.

[Signature on following page]

HALL BOOTH SMITH, P.C.

/s/ James E. Gilson

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JAMES E. GILSON
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DEFENDANT DEMANDS
TRIAL BY JURY